



9110-04-P

## **DEPARTMENT OF HOMELAND SECURITY**

### **Coast Guard**

### **33 CFR Part 165**

**[Docket Number USCG-2019-0632]**

**RIN 1625-AA00**

### **Safety Zone; Fox River, Green Bay, WI**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary safety zone for certain navigable waters of the Fox River in Green Bay, WI within a 300-foot radius of a vessel being used to launch fireworks. This action is necessary to provide for the safety of personnel, vessels, and the marine environment from potential hazards created by a fireworks display. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port Sector Lake Michigan.

**DATES:** This rule is effective on July 26, 2019 from 8 p.m. through 11 p.m.

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG-2019-0632 in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or email Chief Petty Officer Kyle Weitzell, Sector Lake Michigan Waterways Management Division, U.S. Coast Guard; telephone 414-747-7148, email [Kyle.W.Weitzell@uscg.mil](mailto:Kyle.W.Weitzell@uscg.mil).

**SUPPLEMENTARY INFORMATION:**

## **I. Table of Abbreviations**

CFR	Code of Federal Regulations
COTP	Captain of the Port Sector Lake Michigan
DHS	Department of Homeland Security
FR	<b>Federal Register</b>
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

## **II. Background Information and Regulatory History**

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because the Captain of the Port Sector Lake Michigan (COTP) has determined that potential safety hazards associated with this fireworks display pose a threat to vessel traffic on the Fox River and immediate action is needed to respond to those identified hazards. It is impracticable to publish an NPRM because this safety zone must be established by July 26, 2019 and there is not time for a sufficient comment period.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be contrary to the rule’s objective of protecting against potential safety hazards associated with a fireworks display scheduled for July 26, 2019.

## **III. Legal Authority and Need for Rule**

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034 (previously 33

U.S.C. 1231). The COTP has determined that potential hazards associated with a fireworks display on July 26, 2019, will be a safety concern for anyone within a 300-foot radius of a vessel used to launch fireworks on the Fox River in Green Bay, WI. This rule is needed to protect personnel, vessels, and the marine environment in the navigable waters within the safety zone for the duration of the fireworks display.

#### **IV. Discussion of the Rule**

This rule establishes a safety zone from 8 p.m. through 11 p.m. on July 26, 2019. The safety zone will cover all navigable waters of the Fox River in Green Bay, WI within 300 feet of a vessel used to launch fireworks at latitude 44° 31' 4"N, longitude 088° 1' 1"W. The duration of the zone is intended to protect personnel, vessels, and the marine environment for the duration of the fireworks display. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative.

#### **V. Regulatory Analyses**

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

##### *A. Regulatory Planning and Review*

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This rule has not been designated a "significant regulatory action," under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the

requirements of Executive Order 13771.

This regulatory action determination is based on size and duration of this safety zone. This safety zone will be enforced for all navigable waters of the Fox River within 300 feet of a vessel used to launch fireworks for no more than three hours on one day. Additionally, the COTP may consider, on a case-by-case basis, to allow vessels to enter this safety zone during the enforcement period. We anticipate that it will have minimal impact on the economy, will not interfere with other agencies, will not adversely alter the budget of any grant or loan recipients, and will not raise any novel legal or policy issues. Also, the safety zone is designed to minimize its impact on navigable waters.

#### *B. Impact on Small Entities*

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have

questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

#### *C. Collection of Information*

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

#### *D. Federalism and Indian Tribal Governments*

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the

Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section above.

*E. Unfunded Mandates Reform Act*

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

*F. Environment*

We have analyzed this rule under Department of Homeland Security Directive 023-01 and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969(42 U.S.C. 4321-4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone lasting only three hours that will prohibit entry within 300 feet of a vessel being used to launch fireworks. It is categorically excluded from further review under paragraph L60(a) in Table 3-1 of U.S. Coast Guard Environmental Planning Implementing Procedures 5090.1. A Record of Environmental Consideration supporting this determination will be made available in the docket where indicated under **ADDRESSES** once it is completed.

*G. Protest Activities*

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked

to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

### **List of Subjects in 33 CFR Part 165**

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

### **PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS**

1. The authority citation for part 165 continues to read as follows:

**Authority:** 46 U.S.C. 70034, 70051; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.T09-0632 to read as follows:

#### **§ 165.T09-0632 Safety Zone; Fox River, Green Bay, WI.**

(a) Location. The following area is a safety zone: all navigable waters of the Fox River in Green Bay, WI within 300 feet of a vessel used to launch fireworks at latitude 44° 31' 4"N, longitude 088° 1' 1"W.

(b) Period of enforcement. This section will be enforced from 8 p.m. through 11 p.m. on July 26, 2019.

(c) Regulations. (1) In accordance with the general regulations in § 165.23, persons and vessels are prohibited from entering the safety zone unless authorized by the Captain of the Port Sector Lake Michigan (COTP) or a designated representative. A designated representative is a commissioned, warrant, or petty officer of the U.S. Coast Guard assigned to units under the operational control of USCG Sector Lake Michigan.

(2) Persons or vessels desiring to enter into or pass through the zone must request

permission from the COTP or a designated representative. They may be contacted by VHF-FM channel 16 or by telephone at 414-747-7182.

(3) If permission is granted, all persons and vessels shall comply with the instructions of the COTP or designated representative.

(d) Informational broadcasts. The COTP or a designated representative will inform the public of the enforcement date and times for this safety zone, as well as any emergent safety concerns that may delay the enforcement of the zone through Broadcast Notice to Mariners, Local Notice to Mariners, and/or actual notice.

Dated: July 23, 2019.

T. J. Stuhldreier,

Captain, U.S. Coast Guard,

Captain of the Port Sector Lake Michigan.

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